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October 20, 2004

Via Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St. N.W.
Washington, D.C. 20423



RE: STB Section 5a Application No. 46 (Sub-No. 20), *Southern Motor Carriers Rate Conference, Inc.*

Dear Secretary Williams:

Please find enclosed for filing the original and ten (10) copies of The National Industrial Transportation League's Summary of Oral Argument Points in the above referenced proceeding. Also enclosed is a diskette containing this Notice in PDF and Word format.

An extra copy of this Summary is enclosed for stamping and returning to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Jeffrey O. Moreno
*Counsel for The National Industrial
Transportation League*

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BEFORE THE
SURFACE TRANSPORTATION BOARD



SECTION 5a APPLICATION NO. 46 (SUB NO. 20)
SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC.

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SUMMARY OF ORAL ARGUMENT POINTS FOR
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

OCT 20 2004

Part of
Public Record

In response to the Board's October 1, 2004 decision in this proceeding, The National Industrial Transportation League ("League") hereby submits the following written summary of the specific points it desires to address at the oral argument scheduled for October 27, 2004.

SMC has requested nationwide collective ratemaking authority pursuant to 49 U.S.C. § 13703. The Board may only approve a collective ratemaking agreement if it finds that the agreement is in the public interest. Because Board approval of collective ratemaking bestows antitrust immunity upon that activity, such approval should be granted only where there is a clear public interest and the immunity should be no broader than necessary to fulfill the public need sought to be achieved. SMC thus bears a high burden of proof, which it woefully has failed to carry in this proceeding.

The League strongly believes that a competitive market is the best means of determining the economics of motor carrier pricing, and that there is no rational basis for treating motor carriers differently from other competitive industries. The national transportation policy, at 49 U.S.C. § 13101(2)(A), which defines the public interest in part, requires the Board "in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to—(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property...." Expanding SMC's antitrust immunity would significantly

undermine this aspect of the public interest by inhibiting competition and fostering the establishment of unreasonably high class rates.

SMC creates a strawman problem and then offers nationwide collective ratemaking as the solution. More specifically, SMC contends that nationwide collective ratemaking authority will allow it to establish a nationwide baseline of class rates to reflect its member motor carriers' costs and revenue needs, and thereby offer "truly competitive" rates. However, SMC fails to demonstrate that transportation rates in the current marketplace are not already truly competitive, or that the marketplace cannot be truly competitive without expanded antitrust immunity. Collective ratemaking by definition is not competitive and it is likely that collectively established nationwide rates would continue to require the current practice of substantial discounting. Absent any credible public interest need for nationwide collective ratemaking, there is no justification for SMC's request.

There are two fundamentally flawed premises underlying SMC's public interest argument. The first flawed premise of SMC's argument is that motor carriers need a nationwide rate bureau to produce rates that are more competitive than could be set by carriers individually. The second flawed premise is that shippers would be better served by a national baseline of class rates established by a single rate bureau in order to compare the pricing of competing carriers.

Both arguments are absurdly patriarchal. No motor carrier needs a nationwide rate bureau to enable it to quote a competitive rate for traffic moving between two points. Such a premise is counter-intuitive to the very concept of competition. Every SMC member currently has the ability to assess its own costs and revenue needs and to offer competitive rates on any traffic between any two points within the United States. Neither is it essential for a shipper to have a nationwide baseline of class rates in order to know that a 60% discount off a \$100 class

rate is the same as a 20% discount off a \$50 class rate (*i.e.*, \$40). The mere convenience of nationwide collective ratemaking authority is not a compelling public interest justification for antitrust immunity.

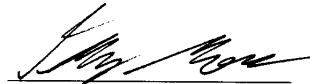
If anything, reduced competition is a more likely result of nationwide collective ratemaking. A nationwide rate bureau would be much more attractive to the mega-carriers (*e.g.* UPS, Federal Express, Yellow/Roadway), which do not currently participate in collective ratemaking. Furthermore, it is likely to spur the elimination and/or consolidation of other rate bureaus that would result in fewer baseline rate choices. If SMC becomes the only rate bureau with expanded market power, it would be better able to raise class rates across the nation. Existing class rates already are substantially above competitive levels and require substantial discounting. The League opposes any activity that is likely to inflate class rates further.

While SMC perversely refers to the existing “plethora of rate bases” available today as a problem, the League views them as evidence of healthy competition. Even if SMC’s claimed benefits of nationwide collective ratemaking authority were true, such benefits do not justify an expansion of antitrust immunity in light of the substantial anti-competitive risks of that activity.

The real beneficiary of SMC’s request for nationwide collective ratemaking authority is SMC itself. SMC’s CzarLite product is at the core of SMC’s request. Nationwide authority would allow SMC to set and adjust the CzarLite rates without relying upon other rate bureaus. At bottom, SMC seeks to reduce the administrative costs and burdens associated with CzarLite and to enhance its market dominance within the transportation industry. The sole beneficiary of

that strategy is SMC. Since SMC's interest does not equal the public interest, its request for nationwide collective ratemaking authority should be denied.

Respectfully submitted,




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October 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have on this 20th day of October, 2004, served a copy of the foregoing Summary of Oral Argument Points for The National Industrial Transportation League on all parties of record, by first-class mail, postage prepaid.


Jeffrey O. Moreno